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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL, 1998

BEFORE  
THE HON'BLE MR.JUSTICE V.K.SINGHAL

WRIT PETITION NO: 17267/1988

BETWEEN:

M/S.C.F.Angadi(HUF)  
rep by the kartha of the family  
Sri C.F.Angadi, Gadag.

PETITIONER

(By Sri.K.R.Prasad, Adv.,)

AND:

The Income Tax Officer,  
Gadag,

2. The Central Board of Direct Taxes,  
Central Secretariat,  
New Delhi.  
rep by its Secretary.

RESPONDENTS

(By Sri.M.V.Sheshachala  
M/S.Nagamohan das and Assts,

This petition is filed praying to quash the  
notice dtd. 18-7-1988.

This petition coming on for hearing this day,  
the Court made the following:-

ORDER ....

O R D E R

By this petition, the jurisdiction of the respondent in initiating reassessment proceedings have been assailed. It appears that earlier, writ petition No.12413/1987 was filed and it was dismissed as withdrawn on 4-1-1988. It is stated that the notice issued under Section 148 would not be enforced. The letter dtd.13-11-1987 was accordingly withdrawn. Notice under Section 48 dtd. 18-8-1988 in respect of the assessment year 1975-76 have again been issued. It is this action of the respondent that has been challenged in this writ petition

2. Learned counsel for the petitioner raised three objections before me.

(a) The reason which is the pre-condition for reassessment does not exist.

(b) The sanction has been given for the status of individual and not of HUF.

(c) On the basis of <sup>information regarding</sup> alleged escapment of capital gains, action could not have been taken.

3. I have considered over the matter.

The file of the respondent was produced and following reasons have been given thereunder:-

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" In the Wealth-tax case of this assessee, the income tax appellate tribunal, Bangalore in their orders WTA NO.222 to 225 Bang/1984 dtd.7-8-1986 for the Assessment years 1975-76, to 78-79 held that the transaction of perpetual leasing of Bangalore Property by the assessee to M/S.Century Hotels(P) Ltd was in the nature of sale and that, therefore, the value of the said property is not includable in the assessee's hands for walth tas purposes, as the said property was deemed to have been sold away by the assessee. Consequent to this finding of the Tribuna;, on the date when the lease came into existence. i.e., 22-4-1974, it is to be taken that the assessee sold out the said property for Rs.10,00,000/- on the said date whereby the assessee became liable to pay long term capital gains tax on the said transaction relevant for the assessment year 1975-76. The long term capital gains that has escaped assessment works out to Rs.7,12,050/- and the tax thereon on the revised total income of Rs,8,01,050/- works out to Rs.5,54,736/-.

In view of the circumstances mentioned above and the finding of the Tribunal in the

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Wealth tax appeals, income to the extent of Rs.7,12,050/- has escaped assessment, within the meaning of Section 147(o) of the Income Tax Act, 1961. Therefore, permission to issue notice under Section 148 may be accorded. "

4. The contention that there are no reason is factually incorrect. It is the existence of the reason and not even sufficiency thereof which could be examined in the proceedings under Article 226 of the Constitution of India. This point therefore has no force.

In the column for name and address of the assessee in ITNS 10 , it is mentioned as C.F.Angadi <sup>contention</sup> (HUF). The therefore that the sanction ~~has~~ been given for the ~~status of an~~ individual and not to HUF ~~has~~ also no force.

In so far as the objection with regard to whether there could have been reassessment on the basis of the information which the respondent have received, it is not for this Court, at this stage to determine them.

The petitioner has already submitted his reply and may further submit objections if any

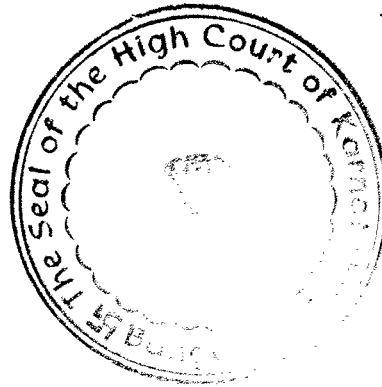
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before the assessing authority within four weeks from today. The respondent may proceed further after taking into consideration the objections which may be filed by the petitioner.

Petition stands disposed of accordingly.

Sd/-  
JUDGE



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